

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: August 15, 2019

Agenda Item: Consent to Issuance of Water Rights

Division: Fisheries

Action Needed: Endorsement

Time Needed on Agenda for this Presentation: 10 minutes

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Background: FWP holds 1,231 water rights (as of June 21, 2019) of which 649 are for instream, natural lakes or reservoirs for the protection of water for fish, wildlife or recreation. In many situations these water rights protect a significant portion if not all the water not diverted from streams and rivers for other water uses and present a barrier to the acquisition of new water rights by other parties. While not the only circumstance, often FWP's water rights would be adversely affected by larger groundwater wells for municipal water systems, including unincorporated subdivisions and districts. Simply shutting down the municipal well does not immediately alleviate the impact to surface water linger to months or years even after water is no longer being pumped nor is shutting the down the well feasible due to public health issues.

Recognizing the conflict between the water demand of continued population growth and protecting existing water rights, in 2007 the Legislature began enacting provisions that explicitly provided for mitigation of surface water depletion due to groundwater development. DNRC interprets those provisions to require that the full monthly depletion be offset by the mitigation. This can be difficult if not impossible to accomplish during the winter months when few consumptive water rights are available to use for mitigation. Because of this situation, a new law in 2017 provided that with written consent of the owner, DNRC may not consider the adverse effects on the owner's water right. This puts FWP in the position of receiving requests to consent to the issuance of new rights or changes in rights that would adversely affect FWP's water rights. These requests typically involve situations where the full annual volume depleted from surface water can be mitigated, but not in the monthly volume depleted (i.e. excess mitigation in summer and inadequate in winter). This out-of-time mitigation is not necessarily detrimental to fish and wildlife and their habitat and therefore in some cases it may serve FWP to consent to the issuance of water rights that legally may adversely effect FWP rights, but does not impact and may benefit fish and wildlife resources. Developing a policy to consistently deal with requests of this nature while protecting the resources entrusted to FWP to manage would provide a defensible and fair means to deal with this issue.

Public Involvement Process & Results: FWP has contacted groups interested in protecting instream flow and used their input in development of an initial policy ideas. Further such public engagement will be undertaken, and the input collected considered prior presenting a final policy recommendation to the Commission.

Alternatives and Analysis: The No Action alternative would leave FWP in its current position of having no clear criteria by which to evaluate and fairly and consistently act on requests to consent to the issuance of certain water rights when mitigation of all adverse effects to FWP rights is not possible or feasible.

Agency Recommendation & Rationale: FWP recommends that the Commission direct FWP staff to develop a policy regarding the consent to issuance of water rights in situations where real time mitigation may not be possible or feasible.

Proposed Motion: I move to direct FWP staff to develop Consent to Issuance Policy subject to final Commission approval.